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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

COMMENTS

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January 5, 1998

No. of Copies rec'd 024
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¹ BellSouth Comments at 2-4 (Oct. 4, 1996); BellSouth Reply Comments at 1-11 (Nov. 22, 1996). In response to the Commission's *Third Notice of Proposed Rulemaking* on this very issue, only four parties supported adoption of an automatic roaming requirement. See Alliance of Independent Wireless Operators ("AIWO") Comments at 6-19 (Oct. 4, 1996); Integrated Communications Group Corporation Comments at 1-2 (Oct. 4, 1996); Radiofone, Inc. Comments at 1-2 (Oct. 4, 1996); Western Wireless Corporation Comments at 2-13 (Oct. 4, 1996). See also *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 9462, 9472 (1996) (indicating that "[m]ost commenters supported our tentative conclusion to leave roaming to market forces while monitoring its progress. Relatively few commenters (mostly new entrants) advocated the need for regulation that would promote automatic roaming.").

DISCUSSION

I. ANY RULE REQUIRING CMRS PROVIDERS TO OFFER AUTOMATIC ROAMING WOULD UNDERMINE COMPETITION

Cellular carriers are licensed to provide service within relatively small geographic areas known as metropolitan service areas ("MSAs") and rural service areas ("RSAs"). Because of the small service areas associated with cellular service, "cellular carriers . . . compete for customers based on the extent of their roaming networks and their roaming rates and features."² In the PCS docket, the majority of commenters, including BellSouth, argued that MSAs and RSAs should be used as the definition of PCS service areas.³ The Commission disagreed, however, and decided that larger PCS service areas were warranted.⁴ The Commission determined that larger service areas were more advantageous than MSAs and RSAs and could "facilitate regional and nationwide roaming."⁵ In essence, the Commission determined that larger service areas would make it easier for PCS licensees to establish roaming agreements on a regional and national level than it was for cellular licensees.

Cellular carriers are not required to offer automatic roaming to one another. The only roaming requirement imposed on cellular carriers was a manual roaming requirement. As a result of market forces, cellular carriers entered into alliances and agreements to create extensive automatic roaming networks. Cellular subscribers still must manually roam in some areas, however, because none of these networks offers nationwide, seamless automatic roaming. For example, BellSouth is

² *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9474.

³ *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, *Second Report and Order*, 8 F.C.C.R. 7700, 7732 (1993); BellSouth Comments, GN Docket No. 90-314, at 30-39 (Nov. 9, 1992).

⁴ *Second Report and Order*, 8 F.C.C.R. at 7732. PCS service areas are defined according to Rand McNally's Major Trading Areas ("MTAs") and Basis Trading Areas ("BTAs"). *Id.*

⁵ *Second Report and Order*, 8 F.C.C.R. at 7732.

unaware of any instance where a cellular carrier has entered into an automatic roaming agreement with its in-market competitor to permit home roaming.⁶

The Commission is now being urged by a small number of PCS carriers to adopt a rule that would entitle all CMRS carriers to automatic roaming from other CMRS carriers. If such a rule were adopted, consumers would be disadvantaged by a lack of product differentiation, and carriers would be unable to take credit, in marketing their services, for certain advantages their systems may have over others. A consumer evaluating whether to purchase cellular or PCS service will compare coverage areas and rate plans. The consumer will note that the PCS system has a larger “home” area, but may have incomplete coverage of that home area and a limited automatic roaming network. Thus, the consumer might decide to subscribe to cellular service because of the associated roaming network or the more complete coverage within the home market. Alternatively, the consumer may choose to subscribe to the PCS system because he or she does not travel outside of the core of the PCS “home” service area very often.⁷ A critical question for the consumer may be whether a larger home area coupled with manual roaming is more desirable than a smaller home area and automatic roaming. If PCS carriers were entitled to automatic roaming, they would gain a significant competitive advantage *vis-a-vis* cellular carriers. Instead of a variety of competitors differentiated in product quality, coverage, and features, all the competitors would appear more or less alike.

The Commission has required cellular licensees to offer manual roaming to all PCS subscribers. Thus, automatic roaming is not necessary to ensure that PCS subscribers can receive

⁶ Home roaming refers to a situation where a subscriber located within its carrier’s home market, roams onto the competitor’s system either because of a deadspot in its carrier’s service or because the competitor has superior signal strength in an area.

⁷ See Communications Week, *Trying to Conquer Roam From Coast to Coast*, CMP Publications, Inc. at T22 (Aug. 4, 1997) (“What we have been trying to do is sell primarily to customers who don’t have the need for coverage in rural areas — we call it ‘fishing in the right pond.’”) (quoting John Stanton, president of Western Wireless Corporation (“WWC”).)

out-of-market service. Select PCS carriers are clamoring for an automatic roaming requirement merely to gain a marketing advantage. AT&T, in particular, is actively seeking an automatic roaming rule in an effort to force cellular carriers to enter into "home roaming" agreements for the first time. Cellular carriers have expended considerable resources in expanding coverage to rural areas and PCS licensees such as AT&T do not want to spend the resources to build-out in such areas.⁸ Thus, if the Commission adopts a rule requiring CMRS carriers to offer automatic roaming to any requesting CMRS provider, AT&T and others will not have to build-out their networks in rural areas.

Rather than adopt a rule discouraging build-out in rural areas, the Commission should merely reaffirm that PCS subscribers are entitled to manually roam in areas where PCS service is not available, provided they have compatible equipment. Cellular and PCS carriers compete based on coverage, rates, features, and roaming footprints. PCS carriers want automatic roaming so that coverage and roaming footprints will not be a competitive factor. PCS systems are digital and most cellular systems are analog, or in the process of converting to digital. Thus, PCS systems would have a clear marketing advantage if coverage and roaming footprints were not a factor for consumers.

Under a manual roaming rule, a subscriber is entitled to roam but is notified that its carrier does not provide service in the area and service is available from a competitor. Largely because of this manual roaming scenario, cellular companies rapidly built-out their systems to ensure that their subscribers did not learn that the competitive provider had superior coverage in certain areas. Currently PCS subscribers can manually roam anywhere a CMRS provider is operating. PCS

⁸ See Mobile Phone News, *AT&T's True PCS Launches on East Coast Will Bring More Revenue to Incumbent Cellular Carriers*, Phillips Business Information, Inc. (Oct. 20, 1997); see also PCS Week, *GSM Turns to Analog Roaming to Expand Outside Urban Cores*, Phillips Business Information, Inc. (Dec. 3, 1997).

licensees simply do not want their customers to know that a competitor's network has superior coverage or a more extensive automatic roaming network.

Automatic roaming agreements are generally premised on reciprocity. Carriers will enter into an agreement if it would permit their subscribers to receive service at lower rates or in areas where they previously were unable to automatically roam. Carriers enter into these agreements to provide subscriber benefits that another carrier does not offer. If automatic roaming is mandated, reciprocity is eliminated and the incentive for carriers to enter into alliances or other arrangements for the purpose of offering lower roaming rates is minimized.

BellSouth believes that roaming rates will increase if carriers cannot take reciprocity into account in negotiating automatic roaming agreements. Likewise, roaming rates will increase if carriers do not have the ability to decline to enter into automatic roaming agreements with carriers who do not offer needed reciprocity. The lack of reciprocity is the central reason why cellular carriers have never fashioned home roaming agreements. Both carriers have the right to provide coverage anywhere within the market. Home roaming merely permits one carrier to piggy-back on the superior coverage of its competitor. The carrier with superior coverage receives no benefit and its competitive position in the marketplace is diminished.

Mandatory automatic "home roaming" also raised serious anticompetitive dangers. In particular, an automatic roaming agreement between two competitors in a market will likely involve the mutual setting of roaming rates in a way that will inevitably lessen price competition and may run afoul of antitrust pricing rules. At a minimum, such activity would be of questionable legality under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2. A home roaming agreement also would raise additional antitrust questions to the extent it effectuated a diminution in product differentiation by, for example, eliminating competition on the basis of the two systems geographic

coverage. Accordingly, it is questionable whether meaningful automatic home roaming agreements can lawfully be negotiated.⁹

In sum, BellSouth concurs with former Commissioner Chong's analysis of the need for Commission regulation of automatic roaming. According to Commissioner Chong:

all of the[] advancements in roaming occurred without a Commission rule or regulation requiring cellular carriers to enter into automatic roaming agreements with each other.

* * *

I further believe that regulation should be imposed only when it is necessary to serve the public interest. It has been argued that automatic roaming is critical during the "headstart" period when the new providers are entering the competitive wireless market so that they can effectively compete with the cellular incumbents. I am not convinced that a new entrant must have access to automatic roaming agreements with every CMRS provider in the nation in order to compete successfully in the wireless market. Traditionally, the majority of roaming takes place in markets near the home market. Unlike the smaller cellular geographic service areas, PCS service areas (MTAs and BTAs) are much larger in size. Thus, PCS customers can travel much further distances without having to roam. In addition, not all wireless customers require roaming capabilities as a condition of subscription. In this regard, it appears that the first broadband PCS system in the nation is very successfully attracting a large number of customers even though it is unable to offer any roaming capability at this time.

On the contrary, I have some concerns that the imposition of automatic roaming requirements might inadvertently hinder competition in the CMRS market in practice. In addition to cellular rates and service plans, cellular carriers compete vigorously in their marketing efforts on the basis of their roaming footprint and roaming rates. If we mandate an automatic roaming requirement, CMRS providers may not be able to differentiate their roaming products as they do today. This may actually serve to lessen overall competition in the CMRS market.¹⁰

⁹ BellSouth notes in this connection, that the Commission lacks explicit statutory authority to immunize such agreements from antitrust attack. See H.R. Rep. No. 104-458 at 201 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 215.

¹⁰ *Third Notice of Proposed Rulemaking*, Separate Statement of Commissioner Rachelle B. Chong, 11 F.C.C.R. 9498-00.

II. IT IS PREMATURE TO ADOPT AN AUTOMATIC ROAMING REQUIREMENT

In 1996, Congress amended the Communications Act to create a “pro-competitive, deregulatory national policy framework.”¹¹ Consistent with this framework, the FCC’s general policy is to allow the marketplace, rather than regulation, to shape the development of wireless service.¹² The FCC has recognized that “all regulation[] necessarily implicates costs, including administrative costs, which should not be imposed *unless clearly warranted*.”¹³ According to Chairman Kennard, the telecommunications industry should be moving away from “government micromanagement” to “common sense pro-consumer deregulation.”¹⁴ Thus, unless the record clearly demonstrates that the marketplace is failing to protect consumers from the effects of anticompetitive behavior, the Commission should not adopt an automatic roaming requirement.¹⁵

¹¹ Pub.L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”); H.R. Rep. No. 104-458 at 1 (1996); *See Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9477.

¹² *See Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9477; *Implementation of Section 302 of the Telecommunications Act of 1996 — Open Video Systems*, CS Docket No. 96-46, *Second Report and Order*, FCC 96-249, ¶ 106 (June 3, 1996); *WNYC Communications Group*, 3 Comm. Reg. (P&F) 400, ¶ 11 (Video Serv. Div. 1996); *Implementation of Sections of the Cable and Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-266, *Report and Order and Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, ¶ 327 (1993); *Intelligent Networks*, CC Docket No. 91-346, *Notice of Inquiry*, 6 F.C.C.R. 7256, ¶ 14 (1991).

¹³ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *First Report and Order*, 3 Comm. Reg. (P&F) 895, ¶ 14 (1996).

¹⁴ Statement of William E. Kennard, Confirmation Hearing before the Commerce, Science and Transportation Comm. (Oct. 1, 1997); *accord* Speech of Commissioner Michael K. Powell before the America’s Carriers Telecommunications Association (Dec. 15, 1997) (“competitive markets are far superior devices for controlling prices, spurring innovation, enhanced quality, and producing consumer choice than are central planning models.”); *Third Notice of Proposed Rulemaking*, Separate Statement of Commissioner Rachelle B. Chong, 11 F.C.C.R. 9498-00.

¹⁵ As BellSouth previously noted, even if market forces were inadequate to protect against anticompetitive behavior, the Commission should only adopt an automatic roaming requirement if existing regulations — such as Section 208 — are inadequate to remedy such behavior. BellSouth Reply Comments at 3 (Nov. 22, 1996).

Nothing in the record indicates that additional roaming regulations are required. Although a few parties have argued that automatic roaming should be mandated,¹⁶ others have indicated that roaming is not essential for PCS development¹⁷ and the rapid growth of new entrants, such as Sprint Spectrum in Washington, DC, undermines claims that automatic roaming is required. Sprint Spectrum grew to more than 100,000 subscribers in its first year of operation, despite having no automatic roaming capabilities during its initial start-up and facing an aggressive advertising campaign by an incumbent identifying this fact.¹⁸

The CMRS marketplace will foster the development of automatic roaming agreements between different types of CMRS. Traditionally, such agreements are premised on reciprocity. For example, the Commission has recognized that cellular carriers must rely on extensive roaming networks to stay competitive.¹⁹ Thus, if a PCS carrier requests an automatic roaming agreement from a cellular carrier, the cellular carrier will enter into such an agreement if many of its subscribers have, or are likely to acquire, dual-mode phones compatible with the PCS carrier's technology choice,²⁰ and (i) its subscribers cannot currently roam automatically in the markets served by the PCS carrier; *or* (ii) the PCS carrier's automatic roaming rate is less than the rate currently available

¹⁶ See AIWO Comments at 6-19; Integrated Communications Group Corporation Comments at 1-2 (Oct. 4, 1996); Radiofone, Inc. Comments at 1-2; WWC Comments at 2-13. It has been reported that AT&T no longer opposes the adoption of an automatic roaming rule. *Compare* AT&T Comments at 3-7, *with* Mobile Phone News, *Is AT&T Asking Colleagues in Cellular Industry to Give Up Coverage Advantage Over PCS*, Phillips Business Information, Inc. (June 2, 1997).

¹⁷ See, e.g., PrimeCo Comments at 10 (Oct. 4, 1996); Sprint Spectrum Comments at 2-4 (Oct. 4, 1996); PCIA Comments at 8-9 (Oct. 4, 1996). See generally PCS Week, *With PCS Spectrum Distributed, Who Won the Much Bally-Hooed Footprint Race* (Feb. 5, 1997).

¹⁸ See PrimeCo Comments at 10; Bell Atlantic NYNEX Mobile Comments at 6 (Oct. 4, 1996).

¹⁹ *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9474; *accord* Separate Statement of Commissioner Rachelle B. Chong, 11 F.C.C.R. 9498-00.

²⁰ Dual mode phones are needed to enable subscribers of one type of CMRS to roam on a different type of CMRS.

to the cellular carrier. In the absence of such reciprocity, the cellular carrier receives no significant benefit for its subscribers from entering into an automatic roaming agreement.

PCS carriers still are building their systems and dual mode phones are just hitting the market. Marketplace incentives are now being created to drive automatic roaming agreements between cellular and PCS carriers, as well as between different types of PCS carriers if technologically possible.²¹ Thus, it should be too early to determine whether the marketplace will fail to encourage automatic roaming agreements between cellular and PCS carriers.

Despite the nascency of the marketplace, PCS carriers are creating vast automatic roaming networks without FCC intervention. For example, Sprint Spectrum, a GSM operator, has entered into numerous automatic roaming agreements with other GSM operators. In April, Sprint Spectrum entered into an automatic roaming agreement with BellSouth Mobility DCS.²² A few months later, Sprint Spectrum entered into an agreement with WWC that permits its subscribers to roam in nine states.²³ In October, Sprint Spectrum entered into an agreement with Omnipoint Corp. that expanded its automatic roaming network to Philadelphia, Eastern Pennsylvania, Southern New Jersey, and Delaware.²⁴ Sprint Spectrum also entered into an automatic roaming agreement with Pacific Bell

²¹ Intelligent roaming database phones which allow carriers to dynamically program customers' phones to select those carriers with which the home carrier has negotiated a favorable reciprocal automatic roaming agreement are just now becoming available.

²² PCS Week, *Microcell Launches Fido in Toronto, Announces More Roaming Agreements*, Phillips Business Information, Inc. (June 4, 1997).

²³ Communications Today, *Western Wireless, APC Strike Roaming Agreement*, Phillips Business Information, Inc. (Sept. 17, 1997). Similarly, WWC subscribers can now automatically roam in the Baltimore/Washington area. *See id.* Given WWC's position that automatic roaming between cellular and PCS systems must be required and is essential if PCS licensees are to compete with incumbent cellular providers, BellSouth presumes that this agreement also allows Sprint Spectrum customers to roam on WWC cellular networks.

²⁴ Communications Daily, Telephony (Oct. 28, 1997).

Mobile Services.²⁵ As a result of these agreements, Sprint Spectrum subscribers may now automatically roam in more than 80 North American cities.²⁶

Many PCS carriers utilizing GSM technology have formed a consortium for roaming and other competitive purposes. As a result, Aerial Communications Inc. recently announced that "its subscribers will have the ability to roam in virtually all of the North American markets where GSM-1900 service is available."²⁷ In fact, PCS systems using GSM technology "have roaming covered fairly well, but they don't [yet] have coast-to-coast coverage."²⁸ According to the president of WWC, all PCS carriers using GSM "agreed real early on to roam. In fact, that is a presumption in the GSM world; part of the commitment when you sign up for GSM is that you'll let people roam on your network."²⁹ As a result of such alliances, PCS automatic roaming networks already rival cellular roaming networks.

²⁵ PCS Week, *Microcell Launches Fido in Toronto, Announces More Roaming Agreements*, Phillips Business Information, Inc. (June 4, 1997).

²⁶ Wireless Today, *Sprint-Cable PCS Entity Applies to Buy Majority Control of APC*, Phillips Business Information, Inc. (Oct. 27, 1997). Sprint Spectrum also has a number of international roaming agreements. See, e.g., Wireless Today, *APC Expands International Roaming Destinations*, Phillips Business Information, Inc. (Nov. 13, 1997).

²⁷ Communications Today, *Aerial Makes Final Preparations to Turn On GSM-1900 Roaming*, Phillips Business Information, Inc. (Dec. 1, 1997). Other competitive alliances are developing such as the joint marketing agreement between WWC and Omnipoint regarding the provision of PCS in Kansas. Wireless Today, *PCS Players to Jointly Market GSM-1900 Service in Kansas BTAs*, Phillips Business Information, Inc. (Dec. 1, 1997).

²⁸ Communications Week, *GSM: Trying to Conquer Roam From Coast to Coast*, CMP Publications, Inc. at T22 (Aug. 4, 1997).

²⁹ Communications Week, *Trying to Conquer Roam From Coast to Coast*, CMP Publications, Inc. at T22 (Aug. 4, 1997).

The availability of automatic roaming agreements is not limited to Sprint Spectrum or PCS-to-PCS roaming.³⁰ Airadigm Communications, Inc., recently signed roaming agreements with three PCS carriers.³¹ Sprint PCS has entered into a roaming agreement that will permit its subscribers to roam throughout Canada.³² Powertel Inc. also has created an automatic roaming network³³ and AT&T has entered into automatic roaming agreements with a number of cellular carriers such as Dobson Communications (covering seven states).³⁴

It should also be noted that rural CMRS carriers oppose mandatory automatic roaming and have claimed that such a requirement would actually "harm small and rural CMRS providers."³⁵ These carriers claim that because "voluntary negotiations have . . . proven effective and efficient, there is no need to devise a regulatory substitute."³⁶ According to RTG:

As a representative of rural telephone companies with small cellular systems and a desire to enter new services such as PCS, RTG is sensitive to the Commission's concern that new entrants and small providers may be shut-out of roaming arrangements by large national CMRS providers. RTG certainly would supply the Commission with evidence if RTG's members experienced such behavior. This is not the case however. Nor in a competitive environ-

³⁰ It has been reported that Sprint Spectrum lagged behind other PCS carriers in putting together an automatic roaming network. See *PCS Week, Microcell Launches Fido in Toronto, Announces More Roaming Agreements*, Phillips Business Information, Inc. (June 4, 1997).

³¹ Communications Today, *Airadigm Signs Roaming Agreement*, Phillips Business Information, Inc. (Sept. 5, 1997).

³² Communications Today, *Cleartel, APC Clinch Roaming Agreements*, Phillips Business Information, Inc. (Oct. 1, 1997).

³³ Wireless Today, *On To Atlanta: Powertel Turns Up GMS-1900 Service in Georgia's Largest Market*, Phillips Business Information, Inc. (Dec. 2, 1997).

³⁴ Communications Daily, *Okla. Telecom Company Signs 5-Year Deal to Build AT&T Wireless Network* (Dec. 11, 1997).

³⁵ Rural Telephone Group ("RTG") Comments at 7 (Oct. 4, 1996); Rural Cellular Association ("RCA") Comments at 3-5 (Oct. 4, 1996). See generally RTG Comments at 1-10.

³⁶ RCA Comments at 5.

ment does RTG anticipate that it will be the case. Absent evidence of widespread abuse, an industry-wide rule is unnecessary. The Commission would better serve the public interest by resolving individual roaming complaints under § 208 of the Communications Act of 1934, as amended.³⁷

III. APPLICATION OF AN AUTOMATIC ROAMING REQUIREMENT WILL IMPOSE UNNECESSARY COSTS AND BURDENS ON CMRS PROVIDERS

As stated above, automatic roaming is not necessary to ensure that PCS customers can complete calls and actually discourages build-out. Although these factors alone should be sufficient to discourage adoption of an automatic roaming requirement, the additional costs associated with such a requirement also counsel against adoption of such a rule. The Commission has recognized that the additional burden of automatic roaming may be too much for some carriers to bear.³⁸ CTIA estimates that the average cost of *manual* roaming is \$53,953 for many carriers.³⁹ Additional costs are associated with automatic roaming for many reasons, including *inter alia* the fact that “[c]ellular companies use the industry standard of CIBER format to exchange information through the clearinghouse. PCS providers using GSM technology will not be able to exchange information using CIBER, creating a necessity for conversion, which would increase costs.”⁴⁰ If automatic roaming would reduce the costs, as some parties claim, regulatory intervention would be unnecessary. In any event, carriers will have market-based incentives to enter into automatic roaming agreements when it saves them money over manual roaming, or when customer demands and competitive

³⁷ RTG Comments at 4.

³⁸ *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9478.

³⁹ CTIA Comments at 18 (Oct. 4, 1996).

⁴⁰ Southwestern Bell Mobile Systems, Inc. (“SWB”) Comments at 2 & Attachment A (Oct. 4, 1996).

circumstances warrant. Until such time, automatic roaming “may be requested by a carrier in an attempt to increase a rival provider’s costs.”⁴¹

Mandatory automatic roaming also would increase fraud-related losses. Fraud currently costs cellular carriers approximately \$750 million per year.⁴² Although new methods of fraud detection are being developed, they are not yet available in all markets nor are they compatible with all technologies. Roaming is a frequent means for accomplishing cellular fraud. In fact, some carriers have found it necessary to place limits on automatic roaming in order to prevent fraud.⁴³ It is for this reason that many cellular carriers are becoming more careful in how they structure automatic roaming agreements. Many cellular carriers apply “an entire set of criteria to prospective roaming partners, including whether the entity in question . . . employs and maintains a call-validation system for fraud prevention.”⁴⁴ A mandatory automatic roaming requirement would prohibit the use of these and similar criteria for deciding whether to enter into an automatic roaming agreement.

IV. IF AN AUTOMATIC ROAMING REQUIREMENT IS IMPOSED, IT SHOULD ONLY REQUIRE CMRS PROVIDERS TO OFFER AUTOMATIC ROAMING TO FACILITIES-BASED CARRIERS AND SHOULD SUNSET AFTER FIVE YEARS

A. Only Facilities Based Carriers Should Be Entitled To Automatic Roaming

If the Commission ultimately determines that an automatic roaming requirement is clearly warranted, the rule should be narrowly tailored. The Commission’s focus has been whether carrier-

⁴¹ CTIA Comments at 15 (Oct. 4, 1996).

⁴² See BellSouth Comments at 4 (Oct. 4, 1996).

⁴³ See “Leading Cellular Carriers Join Forces to Protect Customers From Becoming Phone Fraud Victims,” PR Newswire, Financial Section, Jan. 4, 1995; “Companies Try Different Ways to Combat Cellular Fraud,” America’s Network, Vol. 99, at 14, Feb. 1, 1995; “Hit By Cell Phone Fees,” Successful Meeting, Vol. 44, at 37, Dec. 1995.

⁴⁴ Ameritech Comments at 3 (Oct. 4, 1996).

to-carrier automatic roaming should be required.⁴⁵ Specifically, the Commission's inquiry has focused on whether PCS licensees will be able to create automatic roaming networks. Any automatic roaming requirement should make clear that CMRS licensees are only required to provide automatic roaming to other facilities-based CMRS providers.

A CMRS licensee should not be required to provide automatic roaming to resellers and other non-facilities-based providers.⁴⁶ When facilities-based carriers enter into automatic roaming agreements, each gets the right to offer automatic roaming on the other's system. A CMRS provider receives no competitive benefit by entering into such agreements with resellers or other non-carriers because non-carriers have no roaming rights to offer in return.

B. Any Automatic Roaming Requirement Should Sunset After Five Years

BellSouth continues to support the Commission's tentative conclusion that all roaming regulations should sunset in five years.⁴⁷ Any perceived need to require automatic roaming must be balanced against the public interest of encouraging the aggressive build-out of new networks. An automatic roaming requirement gives a new entrant both the opportunity and incentive to delay building out its system. Rather than expend the resources necessary to promptly build-out its system, the new entrant can build a shell system because its customers will be able to roam on other compatible CMRS systems in the area. Once PCS licensees have satisfied their build-out requirements, "a carrier would not have either the incentive or the ability . . . to unreasonably refuse

⁴⁵ *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9471-78.

⁴⁶ There are a number of companies that are not carriers at all who market roaming only service to their customers.

⁴⁷ *Third Notice of Proposed Rulemaking*, 11 F.C.C.R. at 9479.


to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so.”⁴⁸

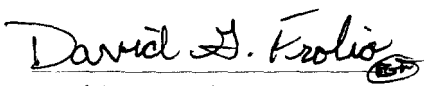
CONCLUSION

For the foregoing reasons, the Commission should not adopt an automatic roaming requirement.

Respectfully submitted,

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January 5, 1998

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I, Crystal M. Clay, hereby certify that on this 5th day of January 1998, copies of the foregoing "Comments of BellSouth" in CC Docket No. 94-54 were served by hand on the following:

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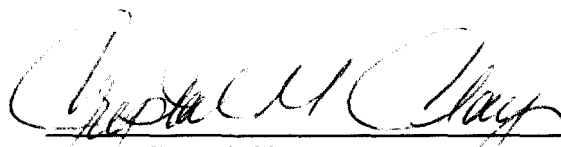
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